IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 780 OF 2005

Shri Nishar Esmial Waghu .. Appellant

Vs.

Shri Sarvesh R. Singh & Ors. .. Respondents

Mr. S.A. Savant for the appellant.
Mr. M.S. Kadu for Respondent No.1.

CORAM: B.H. MARLAPALLE, J.

Date : August 04, 2005.

P.C.:

1. Heard Mr. Savant, the learned counsel for the appellant, who has instituted S.C. Suit No.2477 of 2004. Notice of Motion No.2031 of 2004 taken out in the said suit has been dismissed by the learned Judge of the City Civil Court at Mumbai by the impugned order dated 28-6-2005.

2. The suit has been filed for declaration that the plaintiff is entitled for 20% share in the share capital and assets of the partnership firm by name Anand Construction and for a direction that the defendants shall pay to the plaintiff his share in the

capital and the assets of two firms, namely, Ashiana Construction and Anand Construction. The trial court noted that the plaintiff had purchased a flat in his wife's name in the property developed by Ashiana Construction and the consideration was Rs.13 lacs. The defendant no.1 had withdrawn from Ashiana Construction and the plaintiff had withdrawn from Anand Construction. Consent terms were arrived at between the parties in Suit No.5176 of 2001. It was also noted that the partnership firm by name Ashiana Construction was formed for the development work of Mazgaon Konkan Co-operative Housing Society. The plaintiff had prayed for interim injunction against construction to be carried out in some properties and the trial court noted that the said properties did not belong to Ashiana Construction and, therefore, the interim injunction prayed for had no connection with the main reliefs sought in the suit. Under these circumstances the trial court noted that the plaintiff did not make out a prima facie case for granting the interim relief as prayed for. The view taken by the trial court does not suffer from any errors and, therefore, there is no case made out to entertain this

appeal.

3. The appeal is dismissed in limine. However, this order will not come in the way of the parties to resort to arbitration proceedings, if the conveyance concerned provides for such a relief.

(B.H. Marlapalle,J.)